Re Jagjit Singh

HIGH COURT (BANDAR SERI BEGAWAN) – ORIGINATING MOTION NO 4 OF 1987
ROBERTS CJ
23 JULY 1987

Legal Profession – Ad hoc admission as advocate and solicitor – Application for – Whether ad hoc admission is a matter of right – Whether refusal of admission so close to date of trial would be hard on client – Non-objection to admission by Attorney General – Public interest served – Legal Profession Act (Cap 132), s 7

Legal Profession – Ad hoc admission as advocate and solicitor – Whether s 7(1) paras (b) & (c) of Legal Profession Act be read as cumulative – Section 7(1)(b) to be applied with discretion – Legal Profession Act (Cap 132), s 7

In Civil Suit No 299 of 1986, the plaintiff claimed damages for negligence against the defendants. On 16 June 1988, the first day of the trial, the defendants informed the court that steps would be taken to secure the admission of the applicant, an advocate and solicitor of the High Court of Malaya, to enable him to conduct the case for the defendants. No objection to such an admission was raised by the plaintiff. The defendants then served a notice of motion for the ad hoc admission of the applicant under s 7 of the Legal Profession Act (Cap 132) ('the Act') on the Attorney General on 11 July 1988 and on the plaintiff on 14 July. The Attorney General replied on 16 July 1988 that he did not object to the application. On 20 July, the plaintiff gave notice of their intention to oppose the applicant's admission. The plaintiff contended that: (a) ad hoc admissions under s 7 of the Act are not given as a matter of right and are granted only at the discretion of a judge; (b) it is in the public interest to encourage a strong local legal profession; (c) paragraphs (b) and (c) of s 7(1) of the Act are cumulative, ie a person to be admitted must show both that he is resident outside Brunei and that he has special qualifications.

Held, allowing the application for admission:

(1) Ad hoc admissions have in the past been freely granted under the Act and its predecessor, the Advocates Enactment 1967.

(2) The applicant was given no indication, on 16 June, that there would be any opposition to his admission for the case. To refuse his admission so close to the date of trial would be hard on his client, who would have to replace him at very short notice.

(3) The Act requires that any application for admission must be served on the Attorney General so that he may, if he so decides, oppose it. If he does not indicate any objection, the court must take it that in his view, the public interest, which he represents in this connection, does not argue against the admission sought.

(4) Paragraphs (a), (b) and (c) of s 7(1) of the Act are read as alternatives. Thus if the applicant qualifies under para (b), the court does not have to decide whether he has special qualifications or experience. Paragraph (b), however, should be applied with discretion.

Cases referred to

1 *Re Charles Gray* [1984] HKLR 367 (refd)
2 *Re AR Tyrrel QC* [1984] HKLR 370 (refd)
3 *Re Coles QC* [1985] HKLR 480 (refd)
4 *Re Goldblatt QC* [1985] HKLR 484 (refd)

Legislation referred to

Legal Profession Act (Cap 132) ss 3(d), 7

Peter Chang for the applicant.
TC Chan for the respondent.

Cur Adv Vult

Roberts CJ: Mr Jagjit Singh was admitted as an advocate and solicitor of the High Court of Malaya on 31 December 1968 and has been in practice as such since then in Malaysia. It is not in issue, therefore, that Mr Singh is a qualified person for the purposes of the Legal Profession Act (Cap 132) ('the Act'), by virtue of para (d) of s 3 thereof.

In Civil Suit No 299 of 1986 the plaintiff, as administrator of the estate of Mr Boon Shoon Kong, deceased, claimed damages against the defendants for loss and damage caused by the alleged negligent driving of the first defendant, as agent of the second defendant, on 16 November 1985.

The defendants were represented by a firm of Brunei advocates and solicitors during the interlocutory stages of the action, including the fixing of hearing dates for the trial, which were set by the chief registrar on 4 May.

On 16 June, however, which was supposed to be the first day of the trial, the defendants' advocates sought and were granted a discharge from the case by Macdougall J.

Another Brunei firm of advocates informed the judge that they had been appointed in place of the former firm and sought an adjournment, which was granted.

The new firm, at that hearing, also told the court and plaintiff's counsel that Mr Singh would be conducting the case for the defendants and that steps would be taken to secure his admission for that purpose. No objection to such an admission was raised by counsel for the plaintiff.

Notice of the motion for the ad hoc admission of Mr Singh, under s 7 of the Act, was served on 11 July on the Attorney General and on the plaintiff on 14 July. The Attorney General replied on 16 July that he did not object to the application.

The solicitors for the plaintiff gave notice on 20 July of their intention, on the instructions of the plaintiff, to oppose the admission of Mr Singh. However, the notice of opposition was not supported, as it should be (and I hope will be in future if an application for admission is opposed) by an affidavit setting out the grounds of objection.

In argument before me, counsel for the plaintiff submitted:

(a) that ad hoc admissions under s 7 of the Act are not a matter of right and are granted only at the discretion of a judge;
(b) that the legal profession in Brunei is now of sufficient size and experience for it to be able to deal with most cases;
(c) that it is in the public interest to encourage a strong local legal profession;
(d) that overseas counsel should only be admitted ad hoc if they have special qualifications or experience for the purpose of a case;
(e) that, in exercising the discretions I should follow the principles set out in the Hong Kong cases of *Re Charles Gray*;[1] *Re AR Tyrrel QC*;[2] *Re Coles QC*[3] and *Re Goldblatt QC*.[4]

So far as the application is concerned, I have no hesitation in allowing it. It would, in my view, be wrong to refuse it for the following reasons:

(a) ad hoc admissions have in the past been freely granted under the Act and its predecessor the Advocates Enactment 1957;
(b) the applicant was given no indication, on 16 June, that there would be any opposition to his admission for the case;
(c) to refuse his admission so close to the date of trial would be hard on his client, who would have to replace him at very short notice;
(d) I am not prepared to lay down a series of rules, which would have the effect of restricting ad hoc admissions, on the ground that the public interest so requires, without the benefit of argument from the Attorney General.

The Act requires that any application for admission must be served on the Attorney General so that he may, if he so decides, oppose it. If he does not indicate any objection, I must take it that, in his view, the public interest, which he represents in this connection, does not argue against the admission sought.

As the legal profession in Brunei becomes larger and more experienced, the public interest may well require that some degree of protection be given to it and that this may be achieved, in part, by a restricted use of the discretion to admit under s 7. However, before adopting any such policy, I would want to have the benefit of the Attorney General's view.

I comment in passing that s 7 is in very wide terms, in that it permits the ad hoc admission of:

(a) a Queen's Counsel;
(b) any person residing outside Brunei;
(c) any person with special qualifications or experience.

Counsel sought to persuade me that (b) and (c) are cumulative, ie that a person to be admitted must show both that he is resident outside Brunei and that he has special qualifications.

I do not read the section in that way. I see the three paragraphs as alternatives.

Thus if Mr Singh qualifies under para (b), as he does, I do not have to decide whether he has special qualifications or experience.

Paragraph (b), however, should be applied with discretion. Its terms are wide enough to permit the ad hoc admission of non-resident persons with no legal qualifications or with legal qualification in a foreign country with a different legal system.

It may well be, though I do not have to decide the point here, that in a future applicaton I would exercise my discretion so as to grant applications based on para (b) of s 7(1) only to those who are qualified persons as defined in s 3 of the Act, though this would not prevent the admission also of those who satisfy para (c).

In case future applications are challenged, I advise anyone who intends to apply for an ad hoc admission to do so at least one month before the beginning of a trial, so that any objection may be dealt with in time for the applicant to be replaced if his application is unsuccessful.

I allowed the application and admitted the applicant to practice for the purpose of Civil Suit No 299 of 1986.

I made no order as to costs.

Application allowed.

Solicitors: *Yu & Co; Choo Chan & Wong.*

Reported by *Ng Sheau Jiuan*

Re Anthony Tai Fook Hin

HIGH COURT (BANDAR SERI BEGAWAN) – ORIGINATING MOTION NO 17 OF 1988
ROBERTS CJ
11 AUGUST 1988

Legal Profession – Advocate and solicitor admitted in Brunei but not having obtained practising certificate – Ad hoc admission for appearance in a particular case – Application under para (b) of s 7(1) of Legal Profession Act (Cap 132), s 7(1)(b)

Words and Phrases – To appear on the instructions of an 'advocate and solicitor' – Meaning of

The applicant was admitted as an advocate and solicitor in Brunei in 1987 and 1988 but he had not yet obtained a practising certificate for 1988. He sought ad hoc admission under s 7 of the Legal Profession Act (Cap 132) as he was retained directly by a client who is the defendant in a criminal case pending in Brunei.

Held, rejecting the application:
The applicant was not qualified under para (b) of s 7(1) of the Act because he had not been retained in the case in question